# Supreme Court of the United States

OCTOBER TERM 1958

No. 303

LANE INDUSTRIES, INC.,

Petitioner,

*against*

THE UNITED STATES,

Defendant.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

TO THE HONORABLE, CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Lane Industries, Inc., respectfully prays for a writ of certiorari to the United States Court of Claims to review the opinion and judgment of that court, dated June 4, 1958, dismissing the complaint of the petitioner (Appendix A). The complaint set forth a cause of action for damages brought under the Lucas Act.

### Opinion Below

The opinion of the United States Court of Claims is not yet officially recorded (Appendix A). The opinion and judgment of the United States Court of Claims was filed on June 4, 1958.

## Jurisdiction

The jurisdiction of this court is invoked under 28 U.S.C. 1255.

## Question Presented

Did the assignment of the claim under the Lucas Act, to the plaintiff, violate the provisions of 31 U.S.C. 203?

## Statutes Involved

Section 203—31 U.S.C., insofar as is pertinent, provides as follows:

> "Assignments of claims; set-off against assignee
>
> All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, except as hereinafter provided, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

Pertinent provisions of the Lucas Act (60 Stat. 902, 62 Stat. 869); Public Law 657, 79th Congress:

"The War Contract Hardship Claims Act, or Lucas Act, provides:

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That where work, supplies, or services have been furnished between September 16, 1940, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under Section 201 of the First War Powers Act, 1941 (50 U.S.C., Supp. IV, app. sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of *contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor,* for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. • • •

Sec. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945, and shall consider with respect to such contracts and sub-

contracts * * * (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; * * *

(b). Every claimant under this Act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

Sec. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act."

## Statement of Case

This is an action brought under the War Contract Hardship Claims Act known as the Lucas Act 60 Stat. 902, as amended, 62 Stat. 869, 992, 41 U.S.C. 106, to recover from the United States the sum of a net loss which plaintiff claims was sustained by its assignor in the performance of various government contracts between September 16, 1940 and August 14, 1945.

The United States Court of Claims by order made on October 20, 1954, directed that a separate trial be held of the following issues:

1. Whether under the law plaintiff is entitled to recover, in view of the fact that plaintiff was not the original contractor, but is the successor in interest to the original contractor, through reorganization proceedings.

2. Whether the written request for relief contained in the letter of March 12, 1944, set out in paragraph 4 of the answer, satisfies the requirements of the Lucas Act.

A trial was held on these issues before Commissioner Mastin G. White and after a hearing thereon the Commissioner made findings of fact and conclusions of law, which were brought on for hearing before the United States Court of Claims.

The Court of Claims determined only the first of the two issues presented to it, to wit, that plaintiff could not recover, since the assignment of the claim to it violated the provisions of Sec. 203, 31 U.S.C.

The facts are as follows:

Lane Lifeboat & Davit Corporation, the assignor, hereinafter called Lane I, was the original contractor with the government, which allegedly sustained losses on its contract work, for which recovery is now sought. It filed a formal claim under the Lucas Act with the United States Maritime Commission in 1947 which was rejected. On June 9, 1947, Lane I filed a petition for reorganization under Chapter X of the Bankruptcy Act in the District Court for the Eastern District of New York. The petition was approved and two trustees were appointed, and duly qualified. These were Anthony Staudt and Hunter L. Delatour. Staudt had for more than twenty years prior thereto, been a supplier for Lane I and a subcontractor on some of its war contracts. Towards the end of the war, Lane I was having financial difficulties. Staudt was one of its creditors and another creditor was Edwin V. Krolman, who was also vice-president of Lane I. Staudt, at the request of an officer of Lane I, began to take an active part in straightening out its financial affairs, and in 1945 or 1946, became a member of its board of directors. Staudt did not receive any pay for this work and in addi-

tion, disposed of his holdings in his corporations and used the proceeds thereof for the benefit of Lane I. Krolman also furnished money for Lane I, during this period.

These efforts to rehabilitate Lane I were unsuccessful and on June 9, 1947, Lane I filed a petition for reorganization, as aforestated. The business of Lane I was continued by its trustees.

On June 15, 1948, the trustees received an offer to purchase all of the remaining assets of Lane I, for $31,000.00. This offer was made by Edwin V. Krolman, doing business under the trade name and style of Lane Industries. Accompanying this offer was a letter from Staudt to his co-trustee, Delatour, which referred to Krolman's offer as being made by "a group which until the formation of a corporation was using the trade name of Lane Industries." Staudt informed Delatour that he was associated with this group and interested in this offer and therefore would take no action as trustee with regard to the offer and would resign if it was deemed advisable.

On June 21, 1948, the offer was amended to increase the price to $37,500.00. On June 23, 1948, Delatour, as trustee, petitioned the bankruptcy court for an order to show cause to approve the amended offer of Krolman. One of the assets specifically referred to in the petition was the claim of Lane I, under the Lucas Act. Mr. Delatour informed the court in his petition that Krolman's offer was being made by him "for and on behalf of a group of employees and officers of the debtor corporation, including Mr. Staudt."

On July 7, 1948, after due notice, a hearing was held before the court and Krolman's offer was again increased to $41,400.00. On July 19, 1948, the bankruptcy court entered an order whereby it accepted Krolman's offer and approved and confirmed the sale of all of the remaining assets due him or his assigns, which assets included the

claim of Lane I, under the Lucas Act. This order contained the following language:

> "ORDERED that any assignment by Edwin V. Krolman of his rights in the said offer as amended and in the said bid shall be filed herein prior to the closing of title, and upon the filing of such an assignment herein, the sale and transfer of the assets covered by the said offer shall be made by the trustees to the said assignee or assignees of Edwin V. Krolman, with the same force and effect as if such sale and transfer were made to Edwin V. Krolman;"

Thereafter and on July 29, 1948, Krolman assigned his interest to a corporation which was formed, known as Lane Industries, Inc., hereinafter referred to as Lane II. This assignment specifically included the Lucas Act claim.

As indicated above the order of the bankruptcy court provided that Krolman might assign his bid prior to the closing of title and that if that was done, the assignment would be with the same force and effect as if it had been made to Krolman.

The assignment having been made by Krolman to Lane II, as hereinbefore stated, the trustees and Lane I, executed instruments on August 23, 1948 to Lane II, conveying all of the assets, including the claim of Lane I under the Lucas Act.

The assignment to Lane II therefore, in the words of the order of the United States District Court for the Eastern District of New York was "with the same force and effect as if said sale and transfer were made to Edwin V. Krolman."

The United States Court of Claims held, however, that the assignment of the claim was not made to Lane II, but to Krolman and from him to Lane II, thereby creating a second assignment which was in violation of Sec. 203, 31 U.S.C.

## Dissenting Opinion.

The dissenting opinion in the court below held that Krolman was acting as agent for Lane II, when he purchased these assets, including the claim under the Lucas Act, and therefore the assignment was made directly to Lane II, and being a judicial sale, was not within Section 203, 31 U.S.C.

## Reasons Relied on for Allowance of the Writ

The reasons relied on by petitioner for allowance of the writ of certiorari are:

1. A doctrine involving important questions of Federal law has been enunciated by the United States Court of Claims, which is contrary to the decisions of the Circuit Courts of the several Circuits and of this Court.

2. The decision of the United States Court of Claims is in contravention of an order of the United States District Court for the Eastern District of New York.

3. The decision of the United States Court of Claims affects the rights and remedies of a purchaser of a claim under an order of a Bankruptcy Court.

## ARGUMENT

### (a) Krolman was acting as agent for Lane II the petitioner herein when he purchased the claim under the Lucas Act at a judicial sale.

The dissenting opinion in the United States Court of Claims is correct in its determination that Krolman was acting as agent for Lane II when he purchased the claim under the Lucas Act.

Krolman's offer was made "for and on behalf of a group of employees and officers of the debtor corporation includ-

ing Mr. Staudt." The offer was made in the name of Edwin V. Krolman, doing business under the trade name and style of Lane Industries, until the formation of a corporation, which corporation was later formed and known as Lane II.

**(b) The order of the United States District Court for the Eastern District of New York, dated July 19, 1948, specifically authorized the assignment of the claim by Krolman to be made with the same force and effect as if made to Krolman.**

The decision of the United States Court of Claims is contrary to the terms of the order of the United States District Court, for the Eastern District of New York, dated July 19, 1948, a portion of which is quoted above. When the formal assignment was made by the trustees, it was made directly to Lane II. While Section 203, 31 U.S.C. forbids the assignment of a claim against the United States, the decisions of this court and of other Courts have consistently held that an assignment by operation of law such as in this case, by order of a Bankruptcy Court, is excepted from the provisions of said statute.

*Erwin* v. *United States*, 97 U. S. 392 (1878), *Davis Sewing Machine Co.* v. *United States*, 60 C. Cls. 201 (1925), aff'd 273 U. S. 324 (1927); *In re Gerstenzang*, 5[illegible] Supp. 904 (S.D.N.Y. 1933); and *In re Pottasch Bros. Co.* 11 F. Supp. 275 (S.D.N.Y. 1935).

The decision of the United States Court of Claims, is contrary to law in not finding:

(a) That Krolman was the agent of Lane II, the petitioner herein, and therefore the sale and assignment was made directly to it.

(b) That the order of the United States District Court for the Eastern District of New York, dated July 19, 1948, specifically authorized the sale and assignment of the claim under the Lucas Act to Lane II.

## Conclusion

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari be granted to review the opinion and judgment of the United States Court of Claims.

Respectfully submitted,

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## Appendix "A"

IN THE UNITED STATES COURT OF CLAIMS

No. 48843

(Decided June 4, 1958)

LANE INDUSTRIES, INC. v. THE UNITED STATES

*Mr. Michael Berman* for the plaintiff. *Mr. William I. Musso* was on the brief.

*Mr. Edward L. Metzler*, with whom was *Mr. Acting Assistant Attorney General George S. Leonard*, for the defendant.

OPINION

JONES, *Chief Judge*, delivered the opinion of the court:

This is an action under the War Contract Hardship Claims Act, known as the Lucas Act, 60 Stat. 902, as amended, 62 Stat. 869, 992, 41 U. S. C. § 106 note (1946 Ed., Supp. V), to recover from the United States the sum of an alleged net loss which plaintiff claims was sustained by its assignor in the performance of various Government contracts between September 16, 1940, and August 14, 1945.

Pursuant to Rule 38 (b) of the rules of this court, we entered an order on October 20, 1954, directing that a separate trial be held on the following issues:

1. Whether under the law plaintiff is entitled to recover, in view of the fact that plaintiff was not the original contractor but is the successor in interest to the original contractor through reorganization proceedings.

2. Whether the written request for relief contained in the letter of March 12, 1944, set out in paragraph 4 of the answer, satisfies the requirements of the Lucas Act.

*Appendix "A"*

A hearing was held and we now have the report of the trial commissioner before us, together with the brief of plaintiff and the exceptions and brief of the defendant.

With regard to the first issue above, plaintiff recognizes that, as a general rule, assignments of claims against the United States are rendered void by the provisions of Rev. Stat. § 3477, as amended, 35 Stat. 411 (1908); 54 Stat. 1029 (1940); 31 U. S. C. § 203 which, in pertinent part, provides that

> All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, • • •

Nevertheless, plaintiff maintains that the assignment to it of the present claim was not affected by this action since such assignment was by operation of law, i. e., pursuant to an order of sale by a bankruptcy court and, therefore, excepted from the operation of the statute. In support of its position, plaintiff cites *Davis Sewing Machine Co. v. United States*, 60 Ct. Cls. 201 (1925); *aff'd* 273 U. S. 724 (1927); *In re Gerstenzang*, 5 F. Supp. 904 (S. D. N. Y. 1933); and *In re Pattasch Bros. Co.*, 11 F. Supp. 275 (S. D. N. Y. 1935).

We agree with plaintiff that these cases represent a rule, long and firmly established in the law, to the effect that 31 U. S. C. § 203 does not prohibit assignments by operation of law, of which assignments pursuant to a bankruptcy court's order of sale represent one example. *See Erwin v. United States*, 97 U. S. 392 (1878).

However, we are unable to agree with plaintiff that the instant claim was assigned to it by operation of law.

Rather, we think that a realistic analysis of the facts and circumstances surrounding the assignment in the present case shows that the assignment was accomplished by the voluntary act of an individual and is therefore not excepted from the prohibitions of 31 U. S. C. § 203.

There are involved in this case three somewhat related corporations all of which have the word "Lane" in their titles which, for convenience, will be referred to hereinafter as Lane I, II, and III.

Lane I (known as Lane Lifeboat & Davit Corporation) was the original contractor with the Government which allegedly sustained losses from its contract work for which recovery is now sought. It filed formal claims under the Lucas Act with the United States Maritime Commission in 1947. Thereafter, it was completely dissolved as the result of certain bankruptcy proceedings (as will appear more specifically hereinafter) and is no longer in existence.

Toward the end of the war, Lane I was having difficulty in meeting its financial obligations. One of its creditors was an Anthony Staudt who for more than 20 years had been a supplier for Lane I and, in addition, was a subcontractor on some of Lane I's war contracts. Staudt conducted his business through two corporations that were wholly owned by him.

Another creditor was Edwin V. Krolman who was also vice president of Lane I.

At about this time, apparently at the request of Lane I's president, Staudt began to take an active part in attempting to straighten out the financial affairs of Lane I and, late in 1945 or early in 1946, he became a member of its board of directors.

The efforts to pay creditors and rehabilitate Lane I continued until June 1947. Staudt did not receive any pay for the work he did during this period and, furthermore, he disposed of his wholly owned corporations and used the

proceeds for the benefit of Lane I. Edwin V. Krolman also furnished money to Lane I during this period.

These efforts to rehabilitate Lane I, however, were not meeting with much success. On June 9, 1947, Lane I filed a petition for reorganization under chapter X of the Bankruptcy Act (11 U. S. C. § 501, *et seq.*) in the District Court for the Eastern District of New York. The petition was approved and two trustees were appointed and duly qualified. These were Staudt and a Hunter L. Delatour. The latter apparently had had no previous association with Lane I.

Lane I was continued in business by the trustees. Staudt's primary responsibility as trustee was actually to manage and run the business, whereas Delatour was primarily concerned with handling other matters that arose during the trusteeship.

On March 12, 1948, the United States Maritime Commission rejected Lane I's claim under the Lucas Act.

Shortly thereafter, the attempted reorganization of Lane I was apparently abandoned for on May 24, 1948, the bankruptcy court confirmed a judicial sale of Lane I's real property. Thereafter, the assets that remained in Lane I consisted of its machinery, equipment, inventory, etc., plus its rejected claim under the Lucas Act.

On June 15, 1948, the trustees received an offer to purchase all the remaining assets of Lane I for $31,000. The offer was made by "Edwin V. Krolman, doing business under the tradename and style of Lane Industries." Accompanying this offer was a letter from Staudt to his co-trustee, Delafour, which referred to Krolman's offer as being made by "a group" which, until the formation of a corporation, was using the trade name of Lane Industries. Staudt's letter then informed Delatour that he (Staudt) was "associated" with this group and "interested" in its offer, and that he would, therefore, take

no action as trustee with regard to the offer and would resign as trustee if either the court or Delatour deemed it advisable.

This original offer was rejected by the trustee apparently because the price was not considered fair. On June 21, 1948, the offer was amended to increase the price to $37,500.

On June 23, 1948, Delatour, as trustee, petitioned the bankruptcy court to issue an order to show cause why Krolman's amended offer should not be approved. One of the assets specifically referred to in the petition was the claim of Lane I under the Lucas Act.

In his petition, Delatour informed the court that Krolman's offer was being made by him "for and on behalf of a group of employees and officers of the debtor corporation, including Mr. Staudt."

An order to show cause why the offer of Krolman should not be approved was issued by the court and notice of the proposed sale given. On July 7, 1948, a hearing on the show cause order was held before the court and Krolman's offer was again increased, this time to $41,400.

On July 19, 1948, the bankruptcy court entered an order whereby it "accepted" Krolman's offer and "approved and confirmed" the sale of all the remaining assets to him, or his assigns, which assets included the claim of Lane I under the Lucas Act.

Thereafter, on July 29, 1948, Krolman assigned his interest in the assets acquired by him under the July 19 order to Lane Industries, Inc., hereinafter referred to as Lane II. This assignment specifically included the rejected Lucas Act claim.

Lane II is the plaintiff in this case. It is a New York corporation which filed a certificate of incorporation with the appropriate State agency on August 5, 1948. Lane II is authorized to issue 500 shares of common stock having

a par value of $100 each. Only ten shares of its capital stock have been issued. Originally, these were issued to Staudt (acting in his wife's name—6½ shares) and Krolman (3½ shares). On December 6, 1948, Krolman assigned his 3½ shares to a Margery Nyman. Staudt assumed ownership of his 6½ shares in his own name on December 16, 1948. At the time of the trial herein, Staudt and Margery Nyman continued to own all of Lane II's outstanding stock. As will appear hereinafter, Lane II has no business nor has it any assets except for the Lucas Act claim upon which this suit is predicated.

On August 23, 1948, the trustees and Lane I executed instruments conveying to Lane II the claim of Lane I under the Lucas Act. The authority for this conveyance was stated to be the July 19 order of the bankruptcy court and the subsequent assignment by Krolman of all his interest thereunder to Lane II. The conveyance stated that Lane II had paid a consideration of $34,998.23[1] to the trustees pursuant to the court order. The evidence does not show where Lane II, which had only a $1,000 capital contribution, acquired money sufficient to pay this sum to the trustees.

It is upon the above conveyance that plaintiff relies to show that the assignment of the present claim to it was by operation of law. Plaintiff instituted suit in this court on the assigned claim on September 10, 1948.

No formal conveyance was ever made to Lane II of any of the other assets of Lane I, sale of which had also been confirmed by the court order of July 19, and the rights to which Krolman had assigned on July 29. However, on October 28, 1948, Lane II executed an instrument which

[1] This figure represents the entire amount due the trustees under Krolman's offer of $41,400 after an adjustment for an account receivable which had been eliminated from the assets by payment made directly to the trustees.

purported to convey all of the assets of Lane I (except its Lucas Act claim) acquired by the bankruptcy sale to Staudt, Krolman, James B. Sullivan, Peter J. Lahny, and William I. Musso.

On November 1, 1948, the five individuals referred to above assigned all the assets which they had purportedly acquired from Lane II to Lane Lifeboat & Davit Corporation,[3] hereinafter referred to as Lane III.

Lane III took over the business that had been carried on by Lane I for many years and, at the time of the trial herein, was still engaged in that business. Staudt is president, general manager, and a member of the board of directors of Lane III.

As previously indicated, Lane II, the plaintiff, is not engaged in any business activity and does not have any assets with the exception of the claim involved in this suit: its sole purpose is to hold title to this claim.

It will be noted that there were three steps which accomplished the assignment of the Lucas Act claim to plaintiff: (1) the court order of July 19 approving and confirming its sale to Edwin V. Krolman, or his assigns; (2) the conveyance by Krolman on July 29 of all his right, title and interest in the claim to plaintiff; and, (3) the conveyance by the trustees on August 23 of all their right, title and interest in the claim to plaintiff, as Krolman's assignee.

It is the plaintiff's position that the claim was assigned to it by operation of law since its title thereto is derived from a conveyance by trustees in bankruptcy pursuant to a court's order of sale. It is by observing only plaintiff's chain of legal title to the claim that this conclusion finds support. By observing the substance of the transaction, however, in the light of established law, a different conclusion must be reached.

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[3] A New York corporation having the same name as Lane I.

*Appendix "A"*

It is clear that in a judicial sale such as is involved in this case, it is the court that is the real vendor, *Peerless Mining Co.* v. *Mason*, 145 U. S. 349 (1892); *In re United Toledo Co.*, 152 F. 2d 210 (6th Cir. 1945), and the trustee is merely its agent to obtain the highest bid. *Coulter* v. *Blieden*, 104 F. 2d 29 (8th Cir. 1939), *cert. denied*, 308 U. S. 583. When, therefore, the sale of the claim was approved and confirmed by the court to Edwin V. Krolman, or his assigns, Krolman acquired vested rights in the claim and *full equitable title passed to him at that moment. In re Burr Mfg. and Supply Co.*, 217 Fed. 16 (2d Cir. 1914); *Morrison* v. *Burnette*, 154 Fed. 617 (8th Cir. 1907); *In re Marathon Foundry & Machine Company*, 239 F. 2d 122 (7th Cir. 1956), *cert. denied sub nom Dyner* v. *Schwartz*, 353 U. S. 912 (1957); *In re Crosby Stores, Inc.*, 65 F. 2d 360 (2d Cir. 1933); *Moccasin State Bank* v. *Waldron*, 264 Pac. 940 (Mont. 1928). "[A] confirmation has the effect of completing the sale, and while it does not pass the legal title it vests the full equitable title to the property in the purchaser, even though the deed executed in pursuance thereof is irregular, and even if no deed whatever is made." *In re Burr Mfg. and Supply Co., supra*, at 19. So final is a sale after confirmation by a court of competent jurisdiction that it cannot be set aside except for reasons for which equity would set aside an executed sale between private parties, *Morrison* v. *Burnette, supra; In re Burr Mfg. and Supply Co., supra*; that is fraud, *Webster* v. *Barnes Banking Co.*, 113 F. 2d 1003 (10th Cir. 1940), or mistake, *In re Jewett & Sowers Oil Co.*, 86 F. 2d 497 (7th Cir. 1936); *Sloeum* v. *Edwards*, 168 F. 2d 627 (2d Cir. 1948).

It follows, therefore, that the assignment of the instant claim by operation of law was accomplished, in every substantial sense, when the court entered its order on July 19 confirming sale of the claim to Edwin V. Krolman, or his

assigns. Thereafter, the claim was vested in Krolman to do with as he pleased: he could compel conveyance of the legal title to himself or to anyone to whom he might assign his rights, and the court, by the very terms of its order, recognized his complete dominion over the claim by spelling out his unlimited power to direct and enforce any assignment he might wish.

Krolman assigned his interest in the claim to the plaintiff ten days after the bankruptcy court had confirmed its sale to him. Thereafter, the trustees conveyed the legal title to plaintiff. *But it was Krolman's assignment* and not any assignment by operation of law which transferred the claim to the plaintiff. This assignment by Krolman was an indispensable prerequisite in order for plaintiff to have any interest in the claim and was entirely voluntary on Krolman's part, being neither required nor accomplished by any operation of the law. As such, it was rendered "absolutely null and void" by 31 U. S. C. § 203 and, therefore, plaintiff's action must fail.

Of course, we realize that had Krolman been acting in this matter as an agent of the plaintiff, the July 19 order confirming the sale of the claim to him would have been, in reality, a sale to the plaintiff and Krolman's subsequent assignment would not have been within the prohibitions of the Anti-Assignment statute. *Pantex Pressing Machine Co.* v. *United States*, 108 C. Cls. 735 (1947); *Seaboard Air Line Ry.* v. *United States*, 256 U. S. 655 (1921).

As we have noted above, Krolman, in making his offer to purchase Lane I's assets, purported to act "for and on behalf of a group of employees and officers of the debtor corporation, including Mr. Staudt." This "group" could not have been the plaintiff which was a corporation consisting solely of Staudt and Krolman (at this time). In short, though the evidence is confused and unsatisfactory as to what Krolman's status was in making his offer, there is

nothing in the record from which we could find that Krolman, in purchasing the property and having the sale "approved and confirmed" to him was acting as agent of the plaintiff. Accordingly, there is no alternative but to conclude that Krolman's assignment of the claim to the plaintiff was within the prohibitions of 31 U. S. C. § 203.

In the view we take it is unnecessary to consider whether plaintiff's assignor filed an adequate written request for relief within the meaning of section 3 of the Lucas Act.

Plaintiff's petition will be dismissed.

It is so ordered.

LARAMORE, *Judge*, MADDEN, *Judge;* and LITTLETON, *Judge*, concur.

WHITAKER, *Judge*, dissenting:

The majority opinion shows that Krolman offered to purchase the remaining assets of Lane I on behalf of a group which was using the trade name of Lane Industries. This group turned out to be Krolman and Staudt. Krolman and Staudt then formed a corporation, designated in the majority opinion as Lane II, and Krolman transferred to it the claim of Lane I under the Lucas Act. Under these circumstances I think Krolman was acting as the agent of Lane II when he purchased these assets and, therefore, that the sale by the Bankruptcy Court should be considered as a sale to Lane II and, hence, not within the Anti-Assignment statute as that statute has been construed.

FINDINGS OF FACT

The court, having considered the evidence, the report of Trial Commissioner Mastin G. White, and the briefs and argument of counsel, makes findings of fact as follows:

1. (a) This suit was instituted on September 10, 1948 by Lane Industries, Inc. under the provisions of the so-called

*Appendix "A"*

Lucas Act (Public Law 657, 79th Cong., 60 Stat. 902, as amended by Section 37 of Public Law 773, 80th Cong., 62 Stat. 869, 992).

(b) Lane Industries, Inc., seeks to recover on the basis of an overall net loss allegedly incurred by another corporation, the Lane Lifeboat & Davit Corporation, during the period between August 24, 1942 and August 17, 1945 in the performance of more than 200 contracts for the furnishing of lifeboats and lifeboat equipment to departments and agencies of the defendant. It appears from an exhibit which is annexed to and made a part of the petition, as amended, that the alleged losses were restricted to 12 of the contracts, as follows:

| *Contract* | *Amount of alleged loss* |
|---|---|
| SRF 1—50423 | $ 3.03 |
| 986 | 1,200.00 |
| NY—MC44—6659 | 160.00 |
| SO—6422 | 6,230.64 |
| PHMC44—2918 | 310.00 |
| PHMC44—3002 | 110.00 |
| PRMC44—3350 | 150.00 |
| SO—677 | 56.00 |
| PHMC45—5285 | 4.06 |
| NYMC45—4118 | 149.50 |
| MCe—10054 | 177,852.40 |
| MCe—16028 | 123,288.15 |

However, the alleged losses under the contracts listed above were offset in part by profits that were made in the performance of other contracts, with the result that the net overall loss amounted to $237,823.75, according to the allegations in the petition, as amended.[3]

(c) The petition, as amended, alleges that in August 1948 Lane Industries, Inc., acquired by purchase the claim of the Lane Lifeboat & Davit Corporation under the Lucas Act,

[3] The prayer requests a judgment in the amount of $237,832.75.

*Appendix "A"*

2. Pursuant to Rule 38 (b), the court on October 20, 1954, entered an order directing that a separate trial be held with respect to the following issues of law and related issues of fact

1. Whether under the law plaintiff is entitled to recover in view of the fact that plaintiff was not the original contractor but is the successor in interest to the original contractor through reorganization proceedings.

2. Whether the written request for relief contained in the letter of March 12, 1944 set out in paragraph 4 of the answer, satisfies the requirements of the Lucas Act.

3. With regard to the issues outlined in the court's order of October 20, 1954, the Lucas Act in section 1 authorizes the consideration, adjustment, and settlement of the "equitable claims of contractors, including subcontractors and materialmen," who incurred losses between September 16, 1940 and August 14, 1945 in furnishing work, supplies, or services for any department or agency of the United States under a contract or subcontract; but the act states in section 3 that any such claim shall be limited to losses with respect to which "a written request for relief was filed with such department or agency on or before August 14, 1945."

4. The defendant's contractor, Lane Lifeboat & Davit Corporation, was the first of three related corporations to use the word "Lane" as part of the corporate name. When mentioned hereinafter, this corporation will usually be referred to as "Lane I".

5. (a) Lane I was engaged for many years in the business of manufacturing and selling lifeboats, davits, and winches. At the time when participation by the United States in World War II began, Lane I was a well-established company in its field.

(b) During the period between August 24, 1942 and August 17, 1945, Lane I entered into many contracts with departments and agencies of the defendant pursuant to which Lane I manufactured and furnished lifeboats and lifeboat equipment to the defendant.

6. From 1923 until 1946, Anthony Staudt (hereinafter usually referred to as "Staudt") was a supplier for Lane I, selling it bronze castings, masts, rudders, and other items for its lifeboats. In addition, Staudt was a subcontractor under some of the contracts between Lane I and the defendant referred to in paragraph (b) of finding 5. Staudt conducted his business through two corporations that were wholly owned by him, namely, A. Staudt Company, Inc., and Globe Brass Foundry & Pattern Corporation.

7. (a) Under the date of March 12, 1944, Lane I wrote the following letter to the United States Maritime Commission

U. S. Maritime Commission
Washington, D. C.

*Subject:* Purchase Order PD-MC-43-5716—22′ Metallic Lifeboats
PD-MC-43-14583—24′ Metallic Lifeboats

Gentlemen:

From the attached memo it can be seen that in spite of our best efforts our production costs for the above contracts are such as to result in losses even before general or administrative overhead charges are supplied.

It is our understanding that according to the rules of equity, we are entitled to ask for relief which, in this case, would be a unit price increase to provide at least a minimum profit.

We await your decision with interest.

Yours very truly,

Lane Lifeboat & Davit Corp.
Walter J. Krolman,
President.

(b) The "attached memo" referred to in the letter dated March 12, 1944 is not in evidence.

(c) The present action is largely based on losses that were allegedly incurred by Lane I in the performance of the two contracts mentioned in the letter of March 12, 1944; since the purchase orders PD-MC-43-5716 and PD-MC-43-14583 referred to in that letter are merely other designations for the contracts MCe-10054 and MCe-16028, respectively, under which the principal losses of Lane I involved in the present action are alleged to have occurred. (See finding 1 (b).)

(d) Following the receipt of the letter dated March 12, 1944, the United States Maritime Commission took actions some months later in 1944 that resulted in a unit price increase being granted to Lane I under Title II of the First War Powers Act (55 Stat. 838, 839) and Executive Order 9001 with respect to purchase order PD-MC-43-14583 (contract MCe-16028). However, as the evidence does not show the extent of the unit price increase that Lane I was seeking to obtain by means of the letter dated March 12, 1944, it is unknown whether the relief that was granted by the Maritime Commission in 1944 respecting purchase order PD-MC-43-14583 (contract MCe-16028) constituted full or only partial compliance with the request for relief relative to that purchase order contained in the letter dated March 12, 1944.

(e) No relief was granted to Lane I by the United States Maritime Commission with respect to purchase order PD-MC-43-5716 (contract MCe-10054) pursuant to the request that was contained in the letter of March 12, 1944. The evidence does not show the extent of the unit price increase relative to such purchase order that Lane I was seeking to obtain by means of the letter dated March 12, 1944.

(f) The letter of March 12, 1944 quoted in paragraph (a) of this finding is the letter that is mentioned in the

second part of the court's order dated October 20, 1954. (See finding 2.)

8. At about the time of, or shortly after, the end of hostilities in World War II, Lane I was having difficulty in discharging its financial obligations. One of the creditors of Lane I was Edwin V. Krolman, who was vice president of Lane I. Another creditor was Staudt. The latter took an active part in attempting to straighten out the financial affairs of Lane I; and late in 1945 or early in 1946, Staudt became a member of the board of directors of Lane I. The efforts to pay off creditors and rehabilitate Lane I continued until June 1947. Staudt did not receive any pay for the work that he did during this period in attempting to salvage Lane I. Furthermore, Staudt disposed of his wholly owned corporations (see finding 6) and used the proceeds for the benefit of Lane I. Edwin V. Krolman also furnished money for that purpose.

9. Under the date of April 2, 1946, the following letter was written on behalf of Lane I to the United States Maritime Commission

U. S. Maritime Commission
Renegotiation Division
Washington, D. C.

Gentlemen:

My client, Lane Lifeboat & Davit Corp. 518 Gardner Ave., Brooklyn, N. Y. has requested me to apply for reopening of his contracts with the Maritime Commission.

During the years 1942-1945 inclusive for work done exclusively for the Maritime Commission the losses were exceptionally great. We did not show a profit for any single year during the 1942-1945 period.

This state of affairs left the company in a precarious financial condition. May we therefore urgently request an immediate consideration for a hearing.

Sincerely,

Ralph Dashow.

*Appendix "A"*

10. (a) The letter referred to in finding 9 was supplemented by the filing on February 5, 1947, on March 5, 1947, and on or about July 7, 1947 of documents constituting a formal claim on behalf of Lane I under the Lucas Act. This claim was in the total amount of $301,140.55, and was based upon losses in the respective amounts of $177,852.40 and $123,288.15 allegedly incurred in the performance of contracts with the United States Maritime Commission designated as MCc-10054 and MCc-16028.

(b) The alleged losses mentioned in paragraph (a) of this finding are the ones upon which the present action is based. (See finding 1 (b).)

11. On May 14, 1947, Lane I executed an instrument assigning to the State of New York "all of its right, title and interest in and to Renegotiation Funds due it from the U. S. Maritime Commission as a result of an application now filed and pending with the said U. S. Maritime Commission for the Renegotiation of its War Contracts." The instrument stated that the purpose of the assignment was to secure the payment of "Unemployment Insurance Tax now due" the State.

12. On or about June 9, 1947, Lane I filed in the United States District Court for the Eastern District of New York a petition for reorganization under Chapter X of the Bankruptcy Act. Among the assets listed in the petition was

> • • • a renegotiation claim against the United States Maritime Commission that was filed in the sum of $301,140.55, but which after the deduction of claims for compensation in connection therewith and a portion thereof assigned to the State of New York to cover its claim for unemployment insurance, leaves a net amount available to your petitioner of $65,000.00.

13. Staudt and Hunter L. Delatour were appointed trustees of Lane I in the reorganization proceedings. For his

services as co-trustee, Staudt was paid $50.00 per week under the order of the court.

14. After the reorganization proceedings were instituted, Lane I continued in business as usual, except for the fact that it was under the trusteeship.

15. Staudt's claim in the amount of $31,980.00 and Edwin V. Krolman's claim in the amount of $34,376.10 were among the claims against Lane I that were listed in connection with the reorganization proceedings. Staudt did not receive any payment from Lane I or its trustees on his claim. The evidence does not show whether Edwin V. Krolman received any payment from Lane I or its trustees on his claim.

16. Staudt became a stockholder of Lane I on August 6, 1947, during the trusteeship period.

17. On or about September 26, 1947, the State of New York, acting through its Chief Tax Collector, filed with the court in the reorganization proceedings a claim against Lane I in the total amount of $41,905.57 for money allegedly due the New York State Unemployment Insurance Fund. The evidence does not show what action, if any, was taken by the court on this claim.

18. On March 12, 1948, the United States Maritime Commission rejected the claim of Lane I under the Lucas Act.

19. On May 24, 1948, the bankruptcy court confirmed a judicial sale of Lane I's real property.

20. On or about June 15, 1948, Edwin V. Krolman, acting under the trade name of "Lane Industries", submitted to the court in the reorganization proceedings an offer to purchase the assets of Lane I for the sum of $31,000. The offer was subsequently amended by increasing the amount of the offer to $37,500, and finally to $41,400.

21. (a) Staudt, who was a trustee of Lane I at the time, had an interest in the offer that Edwin V. Krolman made to purchase the assets of Lane I.

(b) In a letter dated June 15, 1948 from Staudt to his co-trustee, Staudt referred to the offer and said that "I am * * * interested in the offer." Stating that he would not do anything which might embarrass his co-trustee or the court, or place himself in a position where there might be a conflict of interests, Staudt said that he did not wish to take any position as a trustee respecting the offer to purchase the assets of Lane I, it being his preference that all decisions with respect to such offers be made by his co-trustee alone. Staudt also stated that he was "perfectly willing to resign as a trustee at any time if either you or the Court deem it advisable."

22. (a) On June 23, 1948, Delatour, as trustee, petitioned the bankruptcy court to issue an order to show cause why Krolman's amended offer should not be approved. One of the assets specifically referred to in the petition was the claim of Lane I under the Lucas Act.

(b) In his petition, Delatour informed the court that Krolman's offer was being made by him "for and on behalf of a group of employees and officers of the debtor corporation, including Mr. Staudt."

(c) An order to show cause why the offer of Krolman should not be approved was issued by the court and notice of the proposed sale given. On July 7, 1948, a hearing on the show cause order was held before the court.

23. On July 19, 1948, the court entered in the reorganization proceedings an order authorizing and directing Hunter L. Delatour and Staudt, trustees, and Lane I, the debtor, to convey to Edwin V. Krolman, or his assigns, upon the payment of a purchase price in the sum of $41,400

> * * * all machinery, tools, furniture, fixtures and equipment, *the claim of the debtor and the trustee against U. S. Maritime Commission for 1942 and 1944 losses on government contracts*, all patents, approved drawings and certificates issued against or on the

basis of approved drawings, the account receivable due and owing to the trustees from Boxart Machine Co. * * * in the face amount of $6,401.77 * * *; and all books, records, papers and files, the name of Lane Lifeboat & Davit Corporation and all goodwill of the debtor * * *. [Emphasis supplied.]

24. On July 29, 1948, Edwin V. Krolman executed an instrument assigning to "Lane Industries, Inc."

> * * * all my right, title and interest under the offer * * * made to Hunter L. Delatour and Anthony Staudt, Trustees of the Lane Life Boat & Davit Corporation * * * to purchase from the said Trustees all of the right title and interest of the said Trustees and of the Lane Life Boat & Davit Corporation * * * for the sum of $41,400 * * * in and to all of the merchandise, inventory, raw material, parts on hand and unfinished work in process, * * * all machinery, tools, furniture, fixtures, and equipment, *the claim of the debtor against the U. S., Maritime Commission for 1942 and 1943 losses on government contracts*, all patents, approved drawings, and certificates issued against or on the basis of approved drawings, the account receivable due and owing to the Trustees from Boxart Machine Co. * * * in the face amount of $6,401.77 * * *; all books, records, papers and files, the name of Lane Life Boat & Davit Corporation, and all of the good will of the Lane Life Boat & Davit Corporation * * *. [Emphasis supplied.]

This instrument stated that it was executed "in consideration of One ($1.00) Dollar and other good and valuable consideration."

25. (a) On August 5, 1948, there was filed with the appropriate agency of the State of New York a certificate of incorporation relating to a new corporation bearing the name of Lane Industries, Inc.

(b) The certificate of incorporation provided that the capital stock of Lane Industries, Inc., should consist of 500 shares of common stock having a par value of $100 each.

(c) The corporation mentioned in this finding will usually be referred to hereinafter as "Lane II". It is the plaintiff in the present action.

26. (a) Only 10 shares of the capital stock of Lane II were ever issued. The original stockholders were Staudt (acting in the name of his wife, Agnes Staudt), who owned 6½ shares of the stock, and Edwin V. Krolman, who owned 3½ shares of the stock.

(b) The sum of $650 was paid for the stock that was issued to Staudt (in his wife's name); and the sum of $350 was paid for the stock that was issued to Edwin V. Krolman.

(c) Edwin V. Krolman transferred his 3½ shares of stock to Margery Nyman on December 6, 1948.

(d) Staudt assumed the ownership of his 6½ shares of stock in his own name as of December 16, 1948.

(e) The ownership of the stock of Lane II by Staudt (6½ shares) and Margery Nyman (3½ shares) continued after December 1948 until the time of the trial in the present case.

27. (a) On August 23, 1948, Lane I executed an instrument conveying to Lane II all of the grantor's

> • • • right, title and interest in and to the claim of Lane Lifeboat & Davit Corporation and of Hunter L. Delatour and Anthony Staudt, as trustees in reorganization of Lane Lifeboat & Davit Corporation, debtor, against the U. S. Maritime Commission under Public Law 657, 79th Congress, filed by Lane Lifeboat & Davit Corporation with the said U. S. Maritime Commission for a net loss totaling $301,140.55.

The instrument of conveyance stated that it was executed in consideration of the sum of $1.00 paid by Lane II to

Lane I and the sum of $34,998.23 paid by Lane II to Hunter L. Delatour and Staudt, as trustees in reorganization of Lane I.[4]

(b) In a similar instrument dated August 23, 1948, Hunter L. Delatour and Staudt, as trustees in reorganization of Lane I, conveyed to Lane II their right, title, and interest as trustees in and to the claim of Lane I "against the U. S. Maritime Commission under Public Law 657, 79th Congress."

(c) Except for the claim of Lane I against the United States Maritime Commission, the instruments of conveyance referred to in pargraphs (a) and (b) of this finding did not include the assets of Lane I which Edwin V. Krolman had been authorized by the court's order of July 19, 1948 to purchase (see finding 23), and concerning which Lane II, as the assignee of Edwin V. Krolman, subsequently acquired the right of purchase (see finding 24).

28. For a time after the conveyances referred to in finding 27 were executed, Lane I continued in the business of manufacturing and selling lifeboats and lifeboat equipment.

29. (a) On October 28, 1948, Lane II executed a document purporting to convey to Staudt, Edwin V. Krolman, James B. Sullivan, Peter J. Lahny, and William J. Musso, "in consideration of One ($1.00) dollar and other good and valuable consideration," all of its

> • • • right, title and interest in and to all of the merchandise, inventory, raw material, parts on hand, unfinished work in process, machinery, tools, furniture, fixtures and equipment, patents approved, drawings and certificates issued against or on the basis of approved drawings, books, records, papers and files, the

[4] The instrument stated that Boxart Machine Company had paid the sum of $6,401.77 to the trustees, thereby reducing the purchase price for the assets of Lane I from $41,400.00 to $34,998.23.

name of Lane Lifeboat & Davit Corporation, and all the good-will of the Lane Lifeboat & Davit Corporation owned by the undersigned as of the date of this Assignment.

(b) The evidence does not disclose the manner in which Lane II acquired (if it did) the property that was included in the conveyance referred to in paragraph (a) of this finding.

30. A new corporation, bearing the name of Lane Lifeboat & Davit Corporation (i. e., the same name as Lane I), was formed on November 1, 1948. When mentioned hereinafter, this new corporation will be referred to as Lane III.

31. On November 1, 1948, Staudt, Edwin V. Krohman, James B. Sullivan, Peter J. Lahny, and William I. Musso, "in consideration of One ($1.00) dollar and other good and valuable consideration," purported to assign to Lane III all of their

> • • • right, title and interest in and to all of the merchandise, inventory, raw material, parts on hand, unfinished work in process, machinery tools, furniture, fixtures and equipment, patents approved, drawings and certificates issues [sic] against or on the basis of approved drawings, books, records, papers and files, the name of Lane Lifeboat & Davit Corporation, and all the good-will of the Lane Lifeboat & Davit Corporation owned by the undersigned as of the date of this Assignment.

32. After the execution of the assignment referred to in finding 31, Lane III took over the business that had been carried on by Lane I for many years. Lane III was still actively engaged in such business at the time of the trial in the present case.

33. Staudt is president, general manager, and a member of the board of directors of Lane III.

34. Lane II (i. e., the plaintiff) is not engaged in any business activity and does not have any assets, with the exception of the Lucas Act claim involved in the present action. The only purpose of Lane II is to hold title to such claim.

35. The plaintiff (Lane II) was not a contractor, subcontractor, or materialman during the period between September 16, 1940 and August 14, 1945, and it did not incur any loss in furnishing work, supplies, or services for any department or agency of the United States under a contract or subcontract during such period.

36. Neither Lane I nor the plaintiff (Lane II) filed with any department or agency of the defendant on or before August 14, 1945 a written request for relief respecting any of the alleged losses upon which this action is based (see finding 1 (b), except for the letter dated March 12, 1944 from Lane I to the United States Maritime Commission (see finding 7).

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is not entitled to recover, and the petition is therefore dismissed.

ILE COPY

Office Supreme Court, U.S.
FILED
SEP 25 1958
JAMES R. BROWNING, Clerk

No. 309

# In the Supreme Court of the United States

OCTOBER TERM, 1958

LANE INDUSTRIES, INC., PETITIONER

*v.*

THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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*Solicitor General,*
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# In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 309

LANE INDUSTRIES, INC., PETITIONER

*v.*

THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the United States Court of Claims (Pet. App. 11–33) is reported at 162 F. Supp. 443.

### JURISDICTION

The judgment of the Court of Claims was entered on June 4, 1958. The petition for a writ of certiorari was filed on August 26, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

### QUESTION PRESENTED

Whether assignment of a Lucas Act claim against the United States is "null and void" under the Anti-Assignment Statute, 31 U. S. C. 203, where the assign-

ment was made by a purchaser who acquired the claim from trustees in a bankruptcy proceeding.

## STATUTES INVOLVED

The Anti-Assignment Statute, 31 U. S. C. 203, provides in pertinent part:

> All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgements of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. * * *

The Lucas Act (Act of August 7, 1946, 60 Stat. 902, as amended, 62 Stat. 869, 41 U. S. C. 106 note (1946 Ed. Supp. V)) provides in pertinent part:

> Where work, supplies, or services have been furnished between September 16, 1940, and Au-

gust 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, app. sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. * * *

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945, and shall consider with respect to such contracts and subcontracts * * * (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; * * *.

(b) Every claimant under this Act shall furnish to the department or agency concerned any

evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act.

* * * * *

## STATEMENT

This suit was instituted by petitioner, Lane Industries, Inc., on September 10, 1948, under the provisions of the Lucas Act (War Contract Hardship Claims Act, 60 Stat. 902, as amended, 62 Stat. 869, 992, 41 U. S. C. 106 note (1946 Ed. Supp. V)) (Pet. App. 20). The Lucas Act authorizes consideration, adjustment and settlement of the "equitable claims of contractors, including subcontractors and materialmen" who suffered losses between September 16, 1940, and August 14, 1945, in performance of Government contracts. The Act requires that any such claims be limited to losses with respect to which "a written request for relief was filed * * * on or before August 14, 1945" (Pet. App. 22; *supra*). Lane Industries, Inc., not having come into existence until 1948, performed no contracts during the war for the Government. It seeks to recover for a loss of $237,832.75, allegedly in-

curred by another corporation, Lane Lifeboat and Davit Corporation, in the performance of Government contracts during the statutory period (Pet. App. 21). In the Court of Claims, petitioner alleged that it had acquired, by purchase, Lane Lifeboat and Davit Corporation's Lucas Act rights (Pet. App. 21).

Pursuant to Rule 38 (b) of its rules, the Court of Claims directed that a separate trial be held with respect to the following issues:

> 1. Whether under the law plaintiff is entitled to recover in view of the fact that plaintiff was not the original contractor but is the successor in interest to the original contractor through reorganization proceedings.
>
> 2. Whether the written request for relief contained in the letter of March 12, 1944 set out in paragraph 4 of the answer, satisfies the requirements of the Lucas Act.

The following facts were adduced in the course of the trial thus ordered. During the period between August 24, 1942 and August 17, 1945, Lane Lifeboat and Davit Corporation (Lane I) entered into many contracts with federal agencies pursuant to which it manufactured and furnished lifeboats and lifeboat equipment to the United States (Pet. App. 22–23). On some of these contracts, Lane I allegedly sustained the losses on which recovery is now sought under the Lucas Act (Pet. App. 23–24). It is claimed that Lane I made written request in 1944 sufficient to satisfy the requirements of Section 3 of the Lucas Act, *supra*, p. 4 (Pet. App. 23). The evidence does not show the extent of the relief that Lane I sought by this

request (Pet. App. 24). Formal application under the Lucas Act, was made in 1947 (Pet. App. 26). Thereafter, as explained below, Lane I was completely dissolved in bankruptcy proceedings which produced petitioner's present claim that it has assumed Lane I's Lucas Act rights.

On June 9, 1947, Lane I filed a petition for reorganization under Chapter X of the Bankruptcy Act in the District Court for the Eastern District of New York. Among the assets listed in the petition was the present Lucas Act claim in somewhat different form (Pet. App. 26). The petition was approved and Anthony Staudt, a creditor and director of Lane I, and Hunter L. Delatour were appointed as trustees. (Pet. App. 26–27). On March 12, 1948, the United States Maritime Commission rejected Lane I's Lucas Act claim. On May 24, 1948, the bankruptcy court confirmed a judicial sale of Lane I's real property (Pet. App. 27).

On June 15, 1948, Edwin Krolman, a creditor and vice-president of Lane I, acting under the trade name of "Lane Industries", submitted to the bankruptcy court an offer to purchase Lane I's remaining assets, including the Lucas Act claim. Amendments increased the original offer of $31,000 to $41,400 (Pet. App. 27). On June 23, 1948, trustee Delatour petitioned the court to issue an order to show cause why the amended offer should not be approved. Specifically listed as among Lane I's assets was the Lucas Act claim. The petition stated that the offer was made by Krolman "for and on behalf of a

group of employees and officers of the debtor corporation, including Mr. Staudt." After a hearing on the show cause order, the court directed (on July 19, 1948) that sale be made, upon payment of $41,400, to Krolman and his assigns of all Lane I's remaining assets, including the Lucas Act claim (Pet. App. 28). The order contained the following paragraph:

> Ordered that any assignment by Edwin V. Krolman of his rights in the said offer as amended and in the said bid shall be filed herein prior to the closing of title, and upon the filing of such an assignment herein, the sale and transfer of the assets covered by the said offer shall be made by the trustees to the said assignee or assignees of Edwin V. Krolman, with the same force and effect as if such sale and transfer were made to Edwin V. Krolman. [Pl. Ex. 3]

Thereafter, on July 29, 1948, Krolman assigned his interest in the assets so acquired by him to Lane Industries, Inc. (Lane II). This assignment specifically included the rejected Lucas Act claim (Pet. App. 29). It was not, however, until August 5, 1948, that there was filed with New York State a certificate of incorporation for Lane II (Pet. App. 29). At this time, the shareholders of record were Mrs. Staudt and Edwin V. Krolman. On August 23, 1948, the bankruptcy trustees and Lane I conveyed Lane I's Lucas Act claim to Lane II.[1] (Pet. App. 30–31).

[1] The conveyances did not include the assets of Lane I which Edwin V. Krolman had been authorized by the court's July 19, 1948 order to purchase, and to which Lane II, as Krolman's assignee, subsequently acquired the right of purchase (Pet. App. 31).

The authority for these conveyances was stated to be the bankruptcy court's July 19th order and Krolman's subsequent assignment to Lane II.

Lane II, the present petitioner, is not engaged in any business activity and does not have any assets beyond the rejected Lucas Act claim. It exists solely to hold title to this claim (Pet. App. 33).

Following a trial held pursuant to the Court of Claims' order (*supra*, at p. 5), the Commissioner of that court made his findings. After a hearing, based on these findings, the Court of Claims (Judge Whitaker dissenting) dismissed Lane II's petition to recover for the alleged loss suffered by Lane I (Pet. App. 33).

The court based its decision on the Anti-Assignment Statute, 31 U. S. C. 203 (*supra*, p. 2), which makes "null and void" assignment of claims against the United States. The court recognized that 31 U. S. C. 203 does not make "null and void" assignments by operation of law, of which assignments by trustees pursuant to a bankruptcy court's order of sale represent one example. But the court did not agree with petitioner's contention that the Lucas Act claim was assigned to it by operation of law. The holding was that, although as a matter of form Lane II acquired legal title through the trustees, as a matter of substance it received its right to the claim solely as a result of Krolman's voluntary assignment to it—an assignment which was voided by 31 U. S. C. 203. In the court's view, the only assignment by operation of law occurred when the bankruptcy court issued its order on July 19, 1948, confirming sale of the claim to

Edwin Krolman or his assigns. At this point, Krolman had absolute dominion over the claim and could do with it as he wished.[2] Therefore, a subsequent voluntary assignment of the claim to petitioner by Krolman was an indispensable prerequisite to petitioner's having any interest in the claim, and that voluntary assignment was wholly void. The court then considered whether Lane II could sue on the claim if Krolman had been acting as its agent in this matter. The court held that, if such a relationship could have been proved, Lane II would have been entitled to sue on the claim, but it went on to hold that "nothing in the record" showed the existence of agency in this case (Pet. App. 20).[3]

## ARGUMENT

The only question presented by the petition has no general importance. Future Lucas Act suits in the Court of Claims are most unlikely;[4] and to the best of our knowledge only two other Lucas Act claims are now before that court, both having been brought by the

[2] The court pointed out that the clause of the bankruptcy court's order (*supra*, p. 7) so heavily relied upon by petitioner merely recognized Krolman's absolute dominion over the claim to do with as he wished (Pet. App. 19).

[3] In view of its holding, the court found it unnecessary to consider the adequacy of Lane I's request for relief made in 1944.

[4] Section 3 of the Act, *supra*, p. 4, requires that claims for losses be filed with the proper agency within six months after approval of the Act (August 7, 1946). Section 6 of the Act requires that claimants dissatisfied with agency action must file their suits in the Court of Claims within six months after that action. At this late date, it is unlikely that any agency has any Lucas Act claims unresolved.

original contractor and not an assignee. Moreover, this case turns on its particular and unique facts, and on those facts the Court of Claims correctly held both that petitioner received its right to the claim solely as a result of Krolman's voluntary assignment (which was barred by the Anti-Assignment Statute, 31 U. S. C. 203), and that Krolman, in making his purchase, was not acting as petitioner's agent.

1. Petitioner's argument that the claim was assigned to it by operation of law because its title was derived from a conveyance by the bankruptcy trustees, pursuant to the court's order of sale, is without substance. The trustees' conveyance was only a matter of form, as is shown by a study of the three transactions involved in the case; petitioner's rights can be traced only to Krolman's *voluntary*, and therefore "null and void", assignment.

The first transaction was the judicial sale to Krolman. When the court issued its order on July 19, 1948, confirming sale of the claim to Krolman or his assigns, Krolman acquired a vested right in that claim and, at that moment, full equitable title passed to him. *Matter of Marathon Foundry & Machine Co.*, 239 F. 2d 122 (C. A. 7), certiorari denied *sub nom. Dyner v. Schwartz*, 353 U. S. 912; *In re Burr Mfg. & Supply Co.*, 217 Fed. 16 (C. A. 2); *Morrison v. Barnette*, 154 Fed. 617 (C. A. 8); Collier, *On Bankruptcy*, Paragraph 70.98 (1942 Ed.). After the confirmation, the sale to Krolman was final and could

[5] *Jardine Mining Co. v. United States*, No. 48880; *Worth Engineer Co. v. United States*, No. 48866.

not be set aside except for reasons which would in equity effect the validity of any private transaction, such as mistake (*Slocum* v. *Edwards*, 168 F. 2d 627 (C. A. 2), *In re Jewett & Sowers Oil Co.*, 86 F. 2d 497 (C. A. 7)), or fraud (*Webster* v. *Barnes Banking Co.*, 113 F. 2d 1003 (C. A. 10)). Thus, as a result of this judicial sale, Krolman had absolute dominion over the claim and could do as he wished with it. As the Court of Claims pointed out (*supra*, fn. 2, p. 9), the bankruptcy court recognized this absolute power, in its order, by spelling out Krolman's unlimited power to direct and enforce any assignment of the claim that he wished. Indeed, to ascribe any other intention to the bankruptcy court would be an unwarranted inference of improper interference with vested interests by that court.

The second transaction involved Krolman's assignment to Lane II, and the third transaction was the trustees' transfer of legal title to Lane II pursuant to Krolman's direction. It is obvious that if Krolman had not assigned his rights to Lane II the trustees could not have subsequently transferred the claim to Lane II. The trustees' conveyance was merely a matter of form and Krolman's assignment was indispensable to petitioner's claim. And in view of Krolman's unlimited power over disposal of the claim, clearly his assignment to petitioner was voluntary, and consequently nullified by 31 U. S. C. 203.

2. There is likewise no merit to petitioner's contention that Krolman, when he made his purchase, was acting as petitioner's agent. In the first place,

Krolman's offer was "for and on behalf of a group of employees and officers of the debtor corporation, including Mr. Staudt." Staudt (acting through his wife) and Krolman—petitioner's sole stockholders, *supra*, p. 7—could hardly be said to be this "group". Secondly, Lane Industries, Inc. came into existence on August 5, 1948, and Krolman's purchase occurred on July 19, 1948. *Supra*, p. 7. It is familiar corporation law that until a corporation exists one cannot be its agent. Thus, in making his purchase, Krolman could not have been acting as an agent for Lane Industries, Inc. Ballantine, *On Corporations*, Section 36 (1946 Ed.); Restatement, Agency, Section 326 (1933). In any event, there is no reason for this Court to review the particular factual finding by the court below that Krolman was not acting as petitioner's agent in this transaction.

3. The Court of Claims found it unnecessary to consider any question apart from the means by which petitioner received its rights to the claim. The Government, however, pointed out below that an additional ground for denying recovery was the inadequacy of Lane I's 1944 request for relief. The evidence shows that the extent of the relief sought by Lane I was not revealed by this request. Under the applicable law, it is very unlikely that the request was adequate. Cf. *Spicer* v. *United States*, 127 C. Cl. 428; *Rosner* v. *United States*, 125 C. Cl. 614.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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